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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2240 of 2002

to

FIRST APPEAL No 2243 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANCHALBEN NAGARBHAI

Versus

SPL.LAQ OFFICER

Appearance:

1. In all First Appeals :

MR AJ PATEL for Petitioner No. 1-3

MR KT DAVE, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. This group of 4 appeals has been filed by the original owners of the agricultural lands situated at village Sughad Taluka Gandhinagar to challenge the judgment and awards of the learned 2nd Extra Assistant Judge and Special Judge (LAQ), Ahmedabad [Rural] at Navrangpura dated 8th February, 2002 in Land Acquisition Reference Nos. 780/1995 to 783/1995. These references have been consolidated and disposed of by the learned Judge by aforesaid common judgment. We also, therefore, propose to dispose of these appeals by this common judgment.

2. With a view to acquire the lands in question for the public purpose, viz. construction of Narmada Main Canal of Sardar Sarovar Project, notification u/S. 4 of the Land Acquisition Act, 1894 (for short 'the Act') was published on 16th January, 1991 and notification u/S. 6 of the Act was published on 15th May, 1991 by respondent no. 1. After complying with all the required procedure under the Act respondent no. 1 determined the market value at Rs.4-80 ps. and Rs.7-20 ps. per sq. mtr. against a common claim of the original land owners of Rs.100/= per sq. mtr. for all the lands. These hands have been amply described in para. 2 of the Reference Court's judgment.

3. Since the claimants were totally dissatisfied with the award of respondent no. 1, they preferred aforesaid reference cases before the Reference Court u/S. 18 of the Act seeking increase in the compensation. The claimants demanded Rs.100/= per sq. mtr. However, the learned Reference Court has granted Rs.71/= inall per sq. mtr. together with all statutory benefits. In other words the amount granted by the Reference Court included the amount already awarded by respondent no. 1. Before this Court the claimants i.e. the appellants have claimed additional sum of Rs.29/= per sq. mtr.

4. It is contended by Mr. A.J. Patel, learned advocate appearing for the appellants that considering the evidence on record the Reference Court ought to have determined the market value of the land in

question at Rs.100/= per sq. mtr. He has further submitted that on earlier occasion lands of this very village were acquired for this very purpose by notification issued u/S. 4 on 13th December, 1985 and u/S. 6 on 31st March, 1987. For the said lands compensation at the rate of Rs.53/= per sq. mtr. was awarded by this Court. In the present case, according to him, the things are very similar except that the notification u/S. 4 of the Act is issued at a later point of time i.e. after five and half years. He has, therefore, submitted that according to the settled law, 10% increase for every subsequent year from the date of publication of the earlier notification u/S. 4 of the Act i.e. 13th December, 1985, ought to have been taken into consideration by the Reference Court, but the same has not been done. He has in support of his submission placed reliance on the decision of the Apex Court rendered in the case of Special Land Acquisition Officer, BYDA, Bagalkot v. Mohd. Hanif Sahib Bawa Sahib reported in 2002 AIR SCW p. 1452 and also decision of Division Bench of this Court rendered in the case of Deputy General Manager, ONGC v. Chaturji Lalaji & ors. reported in 1998 (1) G.L.R. at page 130.

4.1. Mr. K.T. Dave, Ld. AGP has on the other hand opposed these appeals and has supported the judgment of the Reference Court.

4.2. No other submissions have been advanced by them.

5. The law with respect to grant of increase of 10% for every subsequent year from the date of earlier notification published u/S. 4 of the Act towards appreciation in value of land is by now a well settled law. The Apex Court in the case of Special Land Acquisition Officer, BYDA, Bagalkot (supra) has laid down as under :-

> "Where public purpose for which land in question was acquired was building up a new township after submersion of old one in water and lot of developmental activities were taking place and there was failure on part of parties to produce any evidence by way of comparable sale transactions to prove market value and evidence was not forthcoming for adoption or capitalization method, grant of appreciation in value of land @ 10% per annum for every subsequent year from date of acquisition by reference Court by keeping in view market value

> fixed in earlier notifications is neither excessive nor unreasonable, though reference Court made error in arriving at value of land by even taking appreciation at 10% for subsequent years. In the instant case reference Court wrongly valued the land under acquisition in year 1985 at Rs.6.85 per sq.ft. taking the base price of the land at Rs.3/= per sq. ft. fixed in earlier acquisition proceedings for the year 1979 on an appreciation of 10% per annum for every subsequent years. The appreciation of value of land at 10% on the base price of Rs.3/= per sq. ft. would increase the value of the land @ 0.30 paise per year. 0.30 paise multiplied by 7 would come to Rs.2.10 paise. If the appreciation in value of the land for the next seven years is taken at Rs.2.10 paise and added to the base value of Rs.3/=, the market value of the land under acquisition in year 1985 would come to Rs.5.10 paise. Taking an overall view of the matter, Supreme Court fixed the value of the land at Rs.5/= per sq. ft. instead of Rs.5.50 per sq. ft. which was fixed by the reference Court and upheld by the High Court. Further deduction on account of development charges from the price fixed cannot be made as the base price of Rs.3/= had been determined in the earlier acquisition proceedings after taking into account the development charges."

Similarly in the case of Deputy General Manager, ONGC (supra) this Court while accepting the proposition of appreciation in value of land at 10% per annum, has modified the award of the Reference Court. Similarly in the present case when the lands of village Sughad are under acquisition and on earlier occasion when the lands of this very village have been acquired for this very project, the award passed in relation to the said lands can safely be relied on for subsequent acquisition i.e. the present acquisition by appropriately adding 10% per annum towards appreciation in the value of land. Thus, for the lands which were acquired on earlier occasion this Court has awarded Rs.53/= per sq. mtr. In that case the notification was published on 13th December, 1985 as stated above. If the increase of 10% for every subsequent year is given, then the market value of the land in the present case would be Rs.79.50 paise per sq. mtr. The Reference Court has awarded Rs.71/= per sq. mtr. However, considering the settled law the 10% increase ought to have been given by the Reference Court so as to determine the market value of the land in

question at Rs.79.50 paise per sq. mtr. To that extent the upward revision of the market value is required to be made.

5.1. It is, therefore, clear that additional amount of Rs.8.50 paise per sq. mtr. will be required to be given to the appellants towards just compensation of the acquisition of their lands. Additional amount of Rs.8.50 paise per sq. mtr. would be over and above the award made by the Reference Court. This will be together with all statutory benefits available to the appellants under the Act payable under Sections 23(1-A) and 23 (2) of the Act. Respondents will also pay interest as require u/S. 23 of the Act on additional amount of compensation as well as the aforesaid statutory benefits.

6. The result is that these appeals are partly allowed. The respondents are directed to deposit the additional awarded amount together with statutory benefits and the interest thereon within 6 weeks from the date of the receipt of writ of this judgment.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

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